Supreme Court, U.S
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No.2 06-943

IN THE SUPREME COURT OF THE UNITED STATES

****

Robert E. Brown and
Shirley H. Brown h/w
Petitioners

v.

Interbay Funding LLC, and Legreca
and Quinn Real Estate Services Inc.
Respondents

****

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COUR OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the decision emerging from the court of appeals conflict with U. S. Supreme Court's ruling in; Denver A. Youngblood, Jr. v. West Virginia, 126 S. Ct. 2188; and Third Circuit Court of Appeals decision in; Nationwide Mutual Insurance Company v. Starlight Ballroom Dance Club, Inc., and Chan, 175 Fed. App. 519, 2006 U.S. App?
2. Did this deprive Robert E. and Shirley H. Brown rights of substantive due process and Equal protection of the 5th and 14th Amendments of the United States Constitution and Federal Rules of Civil Procedure?
3. Is the United States Supreme Court's review warranted based on the U.S. District Court and Third Circuit Court of Appeals erroneous application of established law, by applying different and vague rationales in reaching their October 17, 2006 opinion?

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IN THE
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Robert E. Brown and Shirley H. Brown h/w
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v.

Interbay Funding LLC, and Legreca and
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Respondents

OPINIONS BELOW

[X] for cases from federal courts:

The opinion of the United States Court of appeals appears at Appendix and it the petition and is unpublished.

[X} the opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

[X] for cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 17, 2006.

[X] A Timely petition for rehearing was denied by the United States Court of Appeals for the Third Circuit on September 18, 2006. A copy of the order denying the Rehearing Enbanc appears at Appendix B.

STATEMENT OF BASIS OF SUPREME COURT JURISDICTION

The Supreme Court acquires jurisdiction base on Supreme Court Rule 10, (a), (b), and (C).

STATEMENT OF THE CASE AND BASIS OF JURISDICTION

This case is based on the violations of FRCP, Constitutional provisions of the United States Constitution, and Third Circuit Court of Appeals and United States District Court, decisions that conflict with Supreme Court decisions in Youngblood v. West Virginia, and Nationwide Mutual Ins. v. Starlight Ballroom established case law. References to these two cases are cited in the Table of Contents pages i through iv, and supportive In Appendices.

This Appeal is being taken to prevent a miscarriage of justice by our judicial system. It stands to prove that the safeguards that were put in place by the Treaties the founders of our nation establish the rights of all sovereign men. These founders constructed a living document said to be the most important document of this nation, named the Constitution of the United States of America.

This Document was formulated for the purpose of giving guidance to our three forms of government, based on the doctrine of "STARE DECISIS" - Lat. "to stand by that which is decided." The principal that the precedent decisions are to be followed by the courts.

REASON FOP GRANTING THE WRIT

This case is an Appeal from the United States District Court for the District of Delaware, based on the abuse of discretion by District Court Judge Sue L. Robinson ruling of Summary Judgment in favor of the Defendants Interbay Funding LLC and Legreca and Quinn Real Estate Services Inc.

Plaintiffs Robert E. Brown and Shirley H. Brown h/w appealed the Judgment of Judge Sue L. Robinson entering of the Summary Judgment based on Judge Sue L. Robinson's abuse of discretion.

Robert and Shirley Brown states that Judge Robinson abused her discretion, when she;

1. Fail to fully and fairy develop the record by allowing Defendants Interbay Funding LLC to allow not to give

en notice of Interbay Motion to Dismiss as mandated by FRCP Rule 7, (b),

2. Rejecting evidence that Interbay did not answer the Summons and Complaint until 120, plus days after being served with the Summons and Complaint.

3. Failing to grant Robert and Shirley Browns Motion for Default Judgment without applying the United States District Court three standard rule test of;

(a) The Plaintiffs being prejudiced.

(b) Did the Defendants present a meritorious?

Defense?

(c) Failing to consider FRCP Rules 6, (d), 7, 1,

(a), (b).

(d) Failing to give proper consideration to

Rebutted evidence of non-compliance of FRCP rules 6, (d), and 7, 1, (a), (b), Rule 11, 1, 2, 3, (a), (b), and 12.

Culminating in perfect description of Judge Sue L. Robinson abuse of discretion.

UNITED STATES DISTRICT COURT

Plaintiffs, Robert E. Brown and Shirley H. Brown, herein after referred to as Robert and Shirley, filed suit on

the Defendants, Interbay Funding LLC, and Legreca and Quinn Real Estate Services Inc, herein after referred to as Interbay and Legreca and Quinn, on June 28, 2004, in the United States District Court for the District of Delaware.

The case was presided over by United States District Court, Judge Sue L. Robinson.

Robert and Shirley Browns' Summons and Complaint were served on Interbay and Legreca and Quinn by Special Process server's employees of Parcels Inc. on June 29, 2004.

On July 19, 2004 Legreca and Quinn filed a timely Answer to Robert and Shirley H. Browns Summons and Complaint and appear on the District Court as Docket # 7, dated entered: 07/19/2004.

Interbay filed a timely Motion to Dismiss, Robert and Shirley Browns Summons and Complaint, and it appears on the District Court as Docket # 8, dated entered 07/19/2004.

Robert and Shirley Brown were not given any notice in writing of the date and time of a hearing of Interbay Motion to Dismiss as mandated by FRCP 7, (b) Pleadings Allowed: Forms of Motions.

Interbay, filed an answer to the Summons and Complaint as it appears on the District Court Docket # 36, dated: 11/22/2006.

On 11/30/2004, Robert and Shirley Brown filed a Motion for Default Judgment.

District Court Judge Sue L. Robinson, denied Robert and Shirley Browns Motion for Default Judgment, and it appear on the District Court Docket # 45 dates entered: 12/20/2004.

District Court Judge Sue L. Robinson, entered Judgment against Robert and Shirley Brown, in favor of Defendants Interbay and Legreca and Quinn and it appears on the District Court Docket # 104 dates entered: 01/12//2006.

APPEAL TO THE THIRD CIRCUIT COURT

On February 17, 2006, Robert and Shirley Brown Appealed to the Third Circuit Court of Appeals, from the January 12, 2006 Judgment, raising the issues of judicial abuse of discretion on the part of District Court Judge Sue L. Robinson.

Robert and Shirley Browns raised the issues of fact that the Third Circuit Court of Appeals Lacked Jurisdiction over the person of Interbay, and that Legreca and Quinn, had impeached themselves in their responses to Rule 33 Interrogatories.

THIRD CIRCUIT OPINION, CONFLICTS

1. The Third Circuit Court of Appeals Opinion of August 17, 2006, by Judges Sloviter, Smith, and Van Antwerpen filed August 18, 2006, conflicts with Nationwide Mutu. Ins. Co. v. Starlight Ballroom Dance Club, Inc., March 14, 2006, Opinion by: AMBRO, Circuit Judge. Before: Ambro, Stapleton, Circuit Judges, Stagg, District Judge, designation.

2. The Third Circuit Court of Appeals August 18, 2006, conflicts with Denver A. Youngblood, Jr. v. West Virginia 126 S. CT. 2188, 165. Ed. 2d. 269, 2006.

3. These violations violate Robert and Shirley Browns of "Due Process and Equal Protection under the Law" of the 5th and 14th Amendments of the United States Constitution of titles 42 USC 1983 and 42 USC 1985.

4. The Third Circuit Court of Appeals Error when it failed to apply established case law Nationwide Mutu. Ins. Co. v. Starlight Ballroom and Youngblood v. West Virginia and then denying, Robert and Shirley Browns Motion he Browns correctly not for Rehearing En Banc pursuant to Third Circuit Court of Appeals Rules 34, and 35 by applying an erroneous and irrational application of law.

In Nationwide Mutual Ins Co. v. Starlight, Ballroom (3 Cir.), Starlight Ballroom, failed to respond to the Summons and Complaint for a period of 120 days, Nationwide Insurance filed for Default Judgment, and served on Starlight Ballroom, and they failed to answer the written Notice of the Motion for Default Judgment.

The presiding Judge in his deliberation of Nationwide Mutu. Ins. Co. Motion for Default Judgment considered three factors. The first factor was; would the Plaintiff be Prejudiced? Second factor was; did the Defendant have a meritorious defense? And third; was the Defendants failure to respond due to his own culpability?

The presiding Judge found that Starlight Ballroom had not responded to the written notice of the Default and

Judgment and granted the Default Judgment against Starlight Ballroom, who had not responded to the Summons and Complaint during a 120 day period.

The conflict of applicability of the similarities of the Robert E. Brown and Shirley H. Brown Case to the Nationwide Mutual Insurance Co. v. Starlight Ballroom case law, are the following fact.

In the case of Robert and Shirley Brown h/w, v. Interbay and Legreca and Quinn case, The Browns filed their Summons and Complaint on June 28, 2004 which was too answered by Interbay and Legreca and Quinn, by July 19, 2004.

On July 19, 2004 Interbay filed a timely Motion to Dismiss pursuant to FRCP 12, without giving a written Notice of the time and date for the hearing of the Motion to Dismiss, as mandated by FRCP Rule 7, (b).

The Third Circuit Court of Appeals error in its Opinion of August 17, 2006 on page 3 starting at line 15;

" Interbay timely filed a motion to dismiss pursuant to Rule 12(b) (6). See DKT. #8. Interbay's motion was not a "substitute" for an answer. Rather, the motion merely

extended Interbay's to file an answer until 10 days after receiving notice of the district Court's action on its motion." The Court of Appeals did not consider the fact that the filing of a Motion to Dismiss, under FRCP Rule 7, (b) MOTIONS AND OTHER PAPERS, a written notice of the time of the hearing, of which Robert and Shirley Brown never received.

Legreca and Quinn filed a timely answer to the Summons and complaint on the prescribed date of July 19, 2004 as is required by FRCP Rule 7.

There after Interbay did not file an answer to the Summons and Complaint until November 22, 2004, which is a period of 120 days.

CONFLICT WITH SUPREME COURT UNITED STATES OPINION

In Youngblood v. West Virginia, the United States Supreme Court held that, the State of West Virginia, Prosecutor abuse of discretion when he disregarded evidence. Police submitted proof of the victim of an alleged rape case admitted in a hand written note that the sex act was consensual but the Prosecutor did not allow it as

evidence that would clear the alleged perpetrator of the charge of rape.

We find similarity in Youngblood v. West Virginia in that Robert and Shirley Brown v. Interbay and Legreca and Quinn case, Judge Sue L. Robinson gave no regarded to Robert and Shirley Browns Motion for Default Judgment, applied an irrational and erroneous reasoning of facts that Interbay had not responded to the Summons and Complaint in a period of 120 days.

Judge Sue L. Robinson, abused her discretion in that she failed to apply the three factors district court judges are required to apply to the Default Judgment test, of Prejudice, Merit and Culpability, holding in Youngblood v. West Virginia, by the U.S. Supreme Court and Nationwide Insurance Co. v. Starlight Ballroom, holding in Third Circuit Court of Appeals decisions.

CONCLUSION

We conclude that the weight of these facts presented is based on the laws of the Constitution of these United States and its judicial system is to administer the Justice.

The facts are that Robert and Shirley Brown were denied their rights of due process and equal justice of the laws in the preceding case of Robert and Shirley Brown v. Interbay and Legreca and Quinn.

The denial by District Court Judge Sue L. Robinson abuse of discretion, allowed Interbay to violate FRCP Rule 7, 1, (a), (b), by not requiring Interbay to answer Robert and Shirley Browns Summons and Complaint in the time mandated by FRCP Rule 7.

Judge Sue L. Robinson, abused her discretion when she failed to apply U.S. District Courts three deciding factors of Prejudice, Merit and, Culpability, in deciding Robert and Shirley Browns Motion for Default Judgment.

The Third Circuit Court of Appeals error in their Opinion of Robert and Shirley Browns Appeal when it failed to apply the doctrine of case law, "Stare Decisis" provide by Nationwide Insurance Co. v. Starlight Ballroom, and Youngblood v. West[1] Virginia. The

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[1] **STARE DECISIS - Lat. "to stand by that which is decided." The principal that the precedent decisions are to be followed by the courts.**

Court of Appeals did not consider the fact that the filing of a Motion to Dismiss, under FRCP Rule 7, (b) MOTIONS AND OTHER PAPERS, a written notice of the time of the hearing, of which Robert and Shirley Brown never received.

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Notary Public

CHERYL EMORY
Notary Public - State of Delaware
My Commission Expires July 17, 2010

IN THE

SUPREME COURT OF THE UNITED STATES

Robert E. Brown and Shirley H. Brown h/w
Petitioners

v.

Interbay Funding LLC, and Legreca and
Quinn Real Estate Services Inc.
Respondents

CERTIFICATE OF SERVICE

This is to certify that on this 2 day of January 2007

This notice of Writ of Certiorari was served on the

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APPENDICES

Exhibit A

IN THE UNITE STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

Robert E. Brown and H. Brown h/w, Plaintiffs.	)	
v.	)	Civ. No. 04-617-SLR
Interbay Funding, LLC Lagreca & Quinn Real Estate Services, Inc. Defendants	)	

ORDER

For reasons stated in the court's memorandum opinion and order of January 11, 2006;

It is ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of defendants Interbay Funding, LLC and Lagreca & Quinn Real Estate Services, Inc. and against plaintiffs Robert E. Brown and Shirley H. Brow.

/S/_____
United States District Judge

Date: January 12, 2006

/S/_____
(by) Deputy Clerk

Exhibit A-1

IN THE UNITE STATES DISTRICT COURT FOR
THE
DISTRICT OF DELAWARE

Robert E. Brown and	)	
Shirley H. Brown h/w,	)	
Plaintiffs.	)	
v.	)	Civ. No. 04-617-SLR
Interbay Funding, LLC, and	)	
Lagreca & Quinn Real	)	
Estate Services, Inc.	)	
Defendants	)	

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Services, Inc.

MEMORANDUM OPINION

Date: January 11, 2006
Wilmington, Delaware
Robinson, Chief Judge

Introduction

[1]On June 28, 2004, plaintiffs Robert E. Brown and Shirley H. Brown filed this action against defendants Interbay Funding, LLC ("Interbay) and Legreca & Quinn Real Estate Services ("Legreca & Quinn") alleging discrimination in violation of the Equal Credit Opportunity Act ("ECOA"), 15 USC §§ 1691 et. seq.; and the Fair Housing Act, 42 USC §§ 3601 et seq. ; negligence; fraud; violations of the Federal Institutions reform, Recovery, and Enforcement Act ("FIRRA"), 12 U.S,C. §§ 1331 et. seq. : and violations of the Uniform Appraisal Standards of Professional Appraisal Practice. (D.I. 1) Pending before the court are cross motions for summary judgment (D.I. 74, 75, 78), and Legreca & Quinn's motions to strike plaintiffs'

Although the parties and court documents reference "Legreca" letters from this defendant reflects the spelling as "Lagreca." (See e.q. D.I. 93 at ex. D) For purposes of this proceeding, the spelling is inconsequential and references are to the identical party.

affidavits. (D.I. 91, 92) For the reasons that follow, defendants' motions for summary judgment are granted and plaintiffs' motion for summary judgment is denied.

II Background

On March 11, 20004, plaintiffs contracted to purchas three parcels of property located at 2617-2619-2625 Market Street, Wilmington, Delaware ("the Property"). (D.I. 1) The properties had been on the market for approximately seven years and the sale prices was $128, 000. (D.I. 76 at ex. 1, p. 3) on parcel contains a two-story , semi-detached commercial building, the other two are paved parking lots. (D.I. 11 at ex. A) The Building is a dwelling built in 1915, that has been converted into a beatuty salon. Id. Plaintiffs intended to use the commercial property to expand their restaurant business. (D.I. 9 at 4).

Plaintiffs applied for a mortgage loan through Janet Madrick, brokerfor Sunset Mortgage Company. (Id.) A loan application was then submitted to Interbay, the

mortgage lender. Inerbay approved the loan application subject to an appraisal of[2]

The property, to assure that there was sufficient collateral for the loan. Id. Interbay contracted with Legreca & Quinn to perform the appraisal. (Id. At ex. A) The agreement required plaintiffs to pay $2,5000. for the appraisal.

Based on other properties within the same zip code, $200,000 range." (D.I. 1 at 3) Robert C. Lagreca, a certified General Property Appraiser certified t\by the state of Delaware and the

---

[2] Plaintiffs own and operate the Walnut Street Deli ("Deli"). (D.I. 1 a(2) According to the complaint, plaintiffs attempted to purchase the property in issue to expand the Deli business to a location that provided consumer parking and, in turn, had the potential to increase revenue. (Id. at 9)

'The agreement of sale lists the selling price as $128,000. (D.. 52m 53, 1) In addition to contracting to purchase the property in issue, plaintiffs "had also contracted to purchase 2627 Market Street, to expand their operation into an Eat –In Restaurant and Banquet Room .by adjoining the 2525 and 2527 first floors through previous entrances that existed in those two adjoining buildings." (D.I. 73, ex. 1 at 5

Commonwealth of Pennsylvania, performed the appraisal. (D.(. 87, 74) He describes his methodology as follows:

The subject property was appraised as one commereial unit consisting of the two story dewelling convérted into commercial use wit on-sie parking.

It is the usual, customary and accepted practice in the business of real Estate a Appraisal to appraise a single unit of commercial property located on several tax parcels by valuing each tax parcel separately. The appraisal f the subject property as a commercial building on-site parking conforms with the USPAP and the SPAP.

(D.I. 74, ex. A) As a result, Legreca & Quinn produced an appraisal report which valued the property at $140,000. (D.I. 26, ex. A) After the appraisal, Interbay adjusted plaintiffs, mortgage calculation, agreeing to finance 65% of the purchase price instead of 80% and requiring plaintiff to make a down payment of 35% of the purchase price instead of the 20%. (ID.)

After learning that the terms of the mortgage had changed, plaintiffs had their bank rescind the $2500, that had been

transferred to Legreca & Quinn because they disputed the accuracy of the appraisal. (D.I. 1 at 4)

Plaintiffs alleged that Legreca & Quinn only appraised one of the lotsand compared the property to those outside the appropriate area. (D>I. 11 at *; D.I> 9 at 5)

Initially, Interbay agreed to have all thrr parcels reappraised based on plaintiffs arguments, bu later informed plaintiffs that the original appraisal had taken the two paved lots into consideration. The appraisal considered paved parking lots as utility added to the parcel with the commercial building. (D.I> 9, ex. A at18) Necause none of the lots used for comparison had on-site parking, Legreca & Quinn assigned a higher value to the parcel with the commercial building, as opposed to valuing the two paved lots independently. (Id.) Subsequently, plaintiffs were informed that the appraisal would remain the same because Legreca & Quinn had already made an adjustment for the remaining square footage. (D.I. 1 at 4 – 5)

Various attempts to "save the deal" with Interbay were unsuccessful. (D.I. 76, ex. 1 at 7) Although plaintiffs then[3] [4]received financing offers from two other lenders, they concluded the '~lenders terms, rates and conditions were poor" and did not accept the offers. (Id. at 8) The agreement of sale for the property in issue was never consummated.

Plaintiffs instituted this action on June 28, 2004. (D.I. 1) Interbay moved to dismiss on July 19, 2004. (D.I. 9) On August 19, 2004, plaintiffs moved for sanctions against defendants. (D.I. 22) On November 8, 2004, the court denied plaintiffs' motion for sanctions and granted Interbay's mption to dismiss as to plaintiffs' claims that Interbay is liable for Legreca & Quinn's appraisal based on an agency relationship. (D.I. 32, 33) The motion was denied, however, with respect to plaintiffs' claim that

---

The result was a value based on 1,875 square feet, the size of the parcel with the building, as opposed to 6, 980 square feet, the size of all three parcels.

4

Interbay relied on a discriminatory appraisal in violation of 12 C.F.R. § 528.2a. (it.)

As a result, a scheduling order was entered directing the exchange of discovery and setting deadlines for the filing of dispositiv motions. (D.I. 35) Interrogatories were exchanged (D.I. 41, 46, 49, 50, 51, 52, 55, 56, 73), documents propounded (D.I. 53, 58, 66, 71), and plaintiff Robert Brown was deposed. (D.I. 69, 72)

Cross motions for summary judgment and opposition thereto were subsequently filed. (D.I. 74, 75, 76, 78, 79, 80, 82, 83,
85, 86, 87) Legreca & Quinn also moved to strike affidavits filed plaintiffs. (D.I. 89, 90. 91, 92)

III. STANDARD OP' REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatorieS, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c). The moving

party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio CorD., 475 U.S. 574, 586 *n.10* (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. KemDer Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995) . The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary

judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex CorD. v. Catrett, 477 U.S. 317, 322 (1986)

IV. DISCUSSION

A. Plaintiffs' Allegations

Plaintiffs assert that the record, as developed through discovery and their independent research, establishes that defendants were engaged in a conspiracy to defraud them through misrepresentation by using a false and "an erroneous [a]ppraisal [r]eport prepared by Legreca & Quinn at the request of Interbay." (D.I. 78 at 3; D.I. 93 at 2) Plaintiffs contend that Legreca & Quinn have violated USPAP and FIERRA regulations in the preparation of the appraisal and that Interbay knew or should have known of the deficiencies.

Specifically, plaintiffs challenge Robert Lagreca

as unqualified to perform the appraisal because he holds a "General Appraisal License" and not a "SRPA or MIA (sic)" certification.[65]

(D.I. 93 at 4) They contend that "[a]ccording to industry standards ofcommercial appraisals, three methods should have applied to the valuations of the subject property." ~ at 8) Because Interbay engaged Legreca & Quinn to perform the appraisal and Interbay knew or should have known that the use of the commercial appraisal was erroneous and detective, plaintiffs argue that Interbay. (D.I. 82) To buttress these arguments, plaintiffs attach copies of affidavits and letters they F) Plaintiffs submit that the appraisal is so blatantly deficient that an expert witness is unnecessary to establish the standard of care. (D.I. 93)

Defendants assert that plaintiffs have failed to produce

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[5] [6]According to a document ostensibly authored by the Appraisal Institute and submitted by plaintiffs, "[l]icensed or certified appraisers are the minimum, while SRA or MM designated appraisers are at the top of the appraiser hierarchy."(D.I. 93 at ex. B) The ppraisal Institute is a not-for-profit

specific facts to support their bald allegations of discrimination. Even assuming that the appraiser lacked the highest credentials to perform commercial appraisals, defendants submit that this does not constitute discrimination. Further, absent expert testimony to establish the standard of care governing the appraisal profession, defendants assert that the negligence claims cannot stand.

Because plaintiffs have clearly identified some causes of action and implicated others only vaguely, the court has endeavored to consider as many issues as relevant to the conduct in question. To that end, the statutory claims are examined first.

B. Equal Credit Opportunity Act

The ECOA "is an anti-discrimination statute which prohibits creditors from discrimination in the extension of credit." Riethman v. Berry, 113 F. Supp.2d 765, 766 (E.D. Pa. 2000); 15 U.S.C. § 1691 (a) . It "was enacted to protect consumers from discrimination by financial institutions." Midlantic National Bank v. Hansen, 48 F.3d 693, 699 (3d Cir. 1995). Under the ECOA, "any creditor who fails to comply with any requirement imposed under this sub-chapter shall be liable to

the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class." 15 U.s.c. S l69le(a). To that end, lenders are prohibited from relying on an appraisal that they know, or should know, is discriminatory in violation of the ECOA. See 12 C.F.R. S 528.2a (2004)

To establish a prima facie case under the ECOA, plaintiffs must demonstrate that: (1) they were a member of a protected class; (2) they applied for credit from defendants; (3) plaintiffs were qualified for the credit; and (4) despite qualification, plaintiffs were denied credit. Chian~ v. Veneman, 385 F.3d 256, 259 (3d Cir. 2004)

Although plaintiffs assert that the record demonstrates discriminatory conduct in violation of the ECCA, they have not presented any evidence to substantiate their allegations. Specifically, there is nothing demonstrating that they were denied credit based on a discriminatory action. In fact, plaintiffs were not denied credit at all. Instead, Interbay changed the terms originally proposed after the appraisal was submitted. Plaintiffs, however, were

still qualified for a loan from Interbay, as well as loans proposed by two other creditors, albeit at a less favorable rate. Therefore, plaintiffs have failed to carry their burden to prove a prima facie case under the ECOA.

To the extent that plaintiffs assert a discrimination claim outside of the scope of the ECOA, based on their argument that the appraisal was discriminatory, the record does not support this contention. Specifically, there is no evidence of record depicting different appraisal methodology being applied to Non-African American property by Legreca & Quinn or used by Interbay. Moreover, plaintiff Robert Brown testified that he has no evidence that Legreca & Quinn appraised properties for other potential buyers by using different methods of appraisal when the property appraised was similar to the subject property. (D.I.74)

See e.g. Rizzitiello v. McDonald's Coro., 2005 WL 545014 at

*3(D. Del. 2005) (evidence of disparate treatment necessary for discrimination claim)

C. The Fair Housing Act

The F1{A provides:

> It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

42 U.S.C. § 3605(a). The FHA was enacted to provide fair housing throughout the United States. 42 U.S.C. § 3601. The FHA defines "dwelling" as "any building, structure, or portion of which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." 42 U.S.C. ~3602(b). The FHA covers residential real estate and not commercial transactions. See Wei~narten Realty Investors v. ~j~tsQ~Inc~, 66 F. Supp.2d 825, 849 (S.D. Tex. 1999); Home Ouest Mortcrac~e LLC v. American Family Mutual

Ins., 340 F. Supp.2d 1177, 1184-1185 (D. Kan. 2004) . Since it is undisputed that the property in issue was zoned commercial, and that plaintiffs intended to use it for a commercial purpose, plaintiffs' claims under the FI{A must fail.

D. **Negligence**

To state a claim for negligence, plaintiffs must demonstrate[6] that: (1) a defendant owed plaintiffs a duty of care; (2) the defendant breached that duty; and (3) the defendant's breach was the proximate cause of plaintiffs' injury. New Haverford Partnershio v. Stroot, 772 A.2d 792, 798 (Del. 2001).

By asserting that Legreca & Quinn deviated from the

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[6] "Inasmuch as plaintiffs seek to hold Interbay liable on an agency relationship with Legreca & Quinn, the court previously rejected this argument by concluding that Legreca & Quinn was acting as an independent contractor. (D.I. 32) To that end, having failed to present expert testimony depicting the appraisal as improper or discriminatory, plaintiffs' discrimination claims against Interbay for relying on the appraisal also fail.

applicable standard of care required for real estate appraisers, a claim for professional negligence is implicated. To state a claim for professional negligence, however, the standard of care applicable to a professional can only be established through expert testimony. Nortleet v. Mid-Atlantic Reality ComDanv. Inc., 2001 WL 695547 (Del. Super. 2001); Davis v. Maute, 770 A.2d 36, 40 n. 3 (Del. 2001).

Plaintiffs have not presented a real estate appraisal expert to establish the standard of care owed by Legreca & Quinn. (D.I. 74 at 8-10, 19) Absent expert testimony, plaintiffs' claim for professional

negligence against Legreca & Quinn fails.' Relatedly, to the extent that plaintiffs contend Legreca & Quinn's conduct violates the professional standards for appraisers under FIRREA and USPAP, the court cannot assess these claims absent expert testimony. Even with the assistance of expert testimony, however, it is unclear whether these claims are even actionable under federal law.

E. Fraud

To state a claim for common law fraud under Delaware law,[7] plaintiffs ust prove: "(1) a false representation made by defendants, usually one of fact; (2) defendants' knowledge or belief that the statement was false; (3) an intent to induce the plaintiffs to act; (4) plaintiffs' justifiable reliance upon the representation; and (5) damage to the plaintiffs as a result." In re: Student Finance Corporation v. Royal Indemnity Co., 2004 WL 609329 at *3 (D. Del. 2004), citing Stephenson v. Caoanon Dev., Inc., 462 A.2d 1069, 1074 (Del. 1983)).

Considering plaintiffs' allegations in light of this authority, the court finds there is nothing of record establishing a false representation by defendants. On that point, an expert report would be most helpful. Although plaintiffs suggest

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[7] The affidavit of Robert Lagreca was submitted by Legreca Quinn. As noted above in more detail, Lagreca averred that "[a]ll analyses, opinions and conclusions in the appraisal report provided to Interbay were prepared in conformity with the USPAP, the SPAP and the Code of Professional Ethics." (D.I. 74 at ex. p. 3-4, infra at 3)

that Legreca & Quinn's failure to employ certain appraisal methodology and Interbay's reliance thereof is fraudulent, they simply have not presented any evidence in support of their allegations.

Nonetheless, even assuming that the appraisal was faulty, plaintiffs still have not demonstrated that they relied on the appraisal. Because the appraisal was prepared for the sole benefit of Interbay and was not to be distributed to plaintiffs, only Interbay could have reasonably been expected to rely on it. (D.I. 78 **ex.** B-D) Further, there is nothing of record demonstrating that Interbay misrepresented the appraisal to plaintiffs.

V. CONCLUSION

For the reasons stated, plaintiffs' motion for summary judgment is denied and defendants' motions for summary judgment are granted. An appropriate order shall issue.

Exhibit B

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No.06-1177
ROBERT E. BROWN;
SHIRLEY H. BROWN, h/w
Appellants

V.

INTERBAY FUNDING LLC;
LEGRECA & QUINN REAL ESTATE
SERVICES INC.

On appeal From the United States District Court
For the District of Delaware
(D. Del. Civ. No. 04-cv-00617)
District Judge: Honorable Sue L. Robinson

Submitted Under Third Circuit LAR 34.1(a)

August 17, 2006

Before: SLOVITER, SMITH AND VAN ANTWERPEN,
CIRCUIT JUDGES

(Filed: August 18, 2006)

OPINION

PER CURIAM

Appellants Robert and Shirley Brown ("the Browns") filed this suit Pro Se in the United States District Court for the District of Delaware, asserting negligence, fraud, and discrimination claims against Appellees, Interbay

Funding LLC ("Interbay") and Lagreca and Quinn Real Estate Services, Inc. ("Lagreca"), in connection with the approval process for a mortgage loan. Intending to expand their deli business, the Browns contracted to buy three parcels of property located at 2617, 2619, and 2625 Market Street in Wilmington, Delaware for $128,000. Two parcels were paved parking lots and the third contained a two-story commercial building. After abandoning their initial efforts to obtain financing elsewhere, the Browns applied for a loan from Interbay, a mortgage lender. At that time, the Browns anticipated that the appraised value of the property would be approximately $200,000, making them eligible for 80% financing of the purchase price with a 20% down payment.'

Interbay approved the Browns' loan application subject to an appraisal, which it then hired Lagreca to perform. Lagreca appraised the property at $140,000. Based on this figure, Interbay notified the Browns that it would only be

able to finance *65%* of the purchase price and that [8]the down payment would be *35%*. The Browns rejected this financing offer, and subsequent attempts to save the deal with Interbay proved unsuccessful. The Browns then filed this suit in the District Court, alleging that Lagreca and Interbay discriminated against them on the basis of their race (African-American) by producing and relying on a flawed appraisal which altered the financing terms. After discovery concluded, the parties filed cross-motions for summary judgment. In an order entered January II, 2006, the District Court granted summary judgment to Interbay and Lagreca. The Browns timely appealed.

We have jurisdiction over this appeal pursuant to 28

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[8]The Browns' expectations were apparently based on an appraisal they had obtained prior to Interbay and Lagreca's involvement.

U.S.C. § 1291. The Browns argue that they were entitled to default judgment against Interbay, because Interbay did not answer the complaint within 20 days after service of the summons and complaint as required by Federal Rule of Civil Procedure 12(a)(1)(A). The Browns further contend that the District Court abused its discretion by ignoring evidence of Interbay's late answer, failing to rule on the motion for default judgment, and allowing Interbay to substitute a motion to dismiss for an answer. We observe at the outset that tht District Court ruled on the motion for a default judgment, denying it on May 11, *2005.* See Dkt. /1 *95.* We review that denial for abuse of discretion. See Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000). While the Browns correctly note that Rule 7(a) requires both a complaint and an answer, they overlook that the time period for filing an answer is altered when a defendant files a motion

under Rule 12. See Fed. R. Civ. P. 12(a)(4). On July 19, 2004, exactly 20 days after service of the summons and complaint, Jnterbay timely filed a niotim t~4ismiss pursuant to Rule 12(b)(6). See Dkt. # 8. Interbay's motion was not a "substitute" for an answer. Rather, the motion merely extended Interbay's time to file an answer until ten days after receiving notice of the District Court's action on its motion. See Fed. R. Civ. P. 12(a)(4)(A). The District Court disposed of the motion to dismiss on November 8, 2004. See Dkt. # 33. Interbay filed its answer on November 22, 2004, in compliance with Rule 1 2(a)(4)(A).[2] See Dkt. # 36. As its answer was timely filed, Interbay did not "fail to plead or otherwise defend as provided by [the] rules." See Fed. R. Civ. P. *55(a).* Thus, the District Court did not abuse its discretion by denying the Browns' motion for default judgment. The Browns' related arguments that the alleged abuse of discretion deprived the District Court of jurisdiction and violated the Browns' constitutional rights

are unsupported and unpersuasive. Similarly, the Browns were not prejudiced by Lagreca's initial failure to respond adequately to their interrogatories. Indeed, the Browns acknowledge that the District Court remedied this problem by ordering Lagreca to provide [9]substantive and meaningful responses. In light of Lagreca's prompt compliance with that order, the Browns have failed to demonstrate any prejudice. Finally, the Browns repeat their contentions that the appraisal was flawed because it only accounted for one parcel rather than all three. In support of this argument, the Browns assert that Lagreca"impeached" itself in its interrogatory responses when it claimed to have included the two paved lots in the appraisal, yet asserted that the

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[9]Weekend days and legal holidays are excluded from the computation of any tin'71e period of less than 11 days. Fed. R. Civ. P. 6(a)

value of the lots themselves was unknown. The District Court addressed these allegations in connection with the Browns' negligence and fraud claims against Lagreca. We agree with the District Court that the negligence claim fails, because the Browns did not introduce any expert testimony to establish the standard of care owed to them by Lagreca. See Travelers Indem. Co. v. Ewing, Cole, Erdman & Eubank, 711 F.2d 14, 17 (3d Cir. 1983); Seiler v. Levitz Furniture Co. of Eastern Region, Inc., 367 A.2d 999, 1008 (Del. 1976). The record evidence likewise does not support a fraud claim. Although the Browns obviously disagree with Lagreca' s appraisal method, they have not presented any evidence tending to show that the appraisal constituted a knowingly false statement on Lagreca's part. See Stephenson v. Capano Dev., Inc., 462 A.2d 1069, 1074 (Del. 1983). Neither can the Browns show that Lagreca intended to use the appraisal to induce them to act

or that they 'justifiably relied" on the appraisal, as Lagreca prepared the appraisal solely for Interbay's use. See id. As the Browns do not discuss, or even refer to, their discrimination claims in their brief, we consider those issues to be waived.[3] See Fed R. App. P. 28(a)(2); Brown v. Sielaff, 474 F.2d 826, 828 (3d Cir. 1973)(issues not raised in a brief on appeal cannot be noticed by the court). The[10] District

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[10]We note that this omission appears to be intentional rather than inadvertent. In their motion to strike Appellees' response briefs, the Browns strenuously argue that Appellees' briefs did not address the issues raised in the opening brief, which concerned only jurisdiction, default judgment, Lagreca' s self-impeachment, and "numerous statutory and constitutional issues." In light of this emphatic statement we decline to read the Browns' opening brief as raising any additional issues. Moreover, had the Browns challenged the disposition of the discrimination claims, we would have affirmed the District Court's judgment as to those claims.

Court's judgment is affirmed. The Browns' motion to strike Appellees' briefs is denied. To the extent Lagreca's motion for leave to file a supplemental appendix is construed as a request to attach the order appealed from, it is granted. To the extent that the motion is construed as a request to expand the record on appeal to include documentation related to Robert Lagreca's qualifications as an appraiser, it is denied. We note that, given the basis for our disposition, this documentation would have had no impact on our disposition even had this motion been granted.

Exhibit C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 06-1177

ROBERT E. BROWN;
SHIRLEY H. BROWN, hlw
Appellants
V.

INTERBAY FUNDING LLC;
LEGRECA & QUINN REAL ESTATE
SERVICES INC.

On appeal From the United States District Court
For the District of Delaware
(D.C. Civil No. 04-cv-006 17)
District Judge: Honorable Sue L. Robinson
Present: SCIRICA, Chief Judge, SLOVITER, McKEE,
RENDELL, BARRY, AMBRO, FUENTES, SMITH,
FISHER
VAN ANT WERPEN and CHAGARES, Circuit Judges
SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by *pro se* Appellants having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en bane*, the petition for

Rehearing is hereby denied.

By the Court,

/s/ Franklin S. Van Antwerpen
Circuit Judge

Dated: September 18, 2006
CRG/CC: Mrs.. Shirley H. Brown
Mr.. Robert E. Brown
Carol J. Antoff, Esq..
David L. Finger, Esq.